



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DRUGS AND MEDICAL DEVICES GROUP WEB SITE:

<http://www.dshs.state.tx.us/dmd/>

LICENSING OF TATTOO AND CERTAIN BODY PIERCING STUDIOS

(25 Texas Administrative Code, §§229.401 – 229.413)

Section:

- §229.401. General Provisions
- §229.402. Definitions
- §229.403. Licensing Fees, Procedures, and Exemptions
- §229.404. Physical Facilities
- §229.405. Personnel Responsibilities
- §229.406. Client Qualifications, Disclosure, and Records
- §229.407. Sterilization
- §229.408. Care of the New Tattoo and/or Body Piercing
- §229.409. Tattooing and Body Piercing Instruments and Jewelry
- §229.410. Report of Infection or Allergic Reactions
- §229.411. Disposal of Infectious Waste
- §229.412. Enforcement, Administrative Penalties, Refusal, Revocation, or Suspension of License, and Emergency Orders
- §229.413. Tongue Splitting

§229.401. General Provisions

(a) These sections provide rules for the licensing and regulation of tattoo and certain body piercing studios and temporary locations.

(b) The "Tattoo and Certain Body Piercing Studio Act," Texas Health and Safety Code, Chapter 146.

(c) No person may cause, suffer or allow the operation, management, or maintenance of a tattoo and certain body piercing studio and temporary location without a license issued in accordance with these sections.

(d) All tattoo and certain body piercing studios and temporary locations shall comply with the minimum standards specified in these sections in addition to the existing standards contained in the Tattoo and Certain Body Piercing Studio Act and the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, relating to drugs, devices, and cosmetics, including adulteration and misbranding.

(e) All tattoo and certain body piercing studios and temporary locations should comply with applicable provisions of the Americans With Disabilities Act.

§229.402. Definitions

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Tattoo and Certain Body Piercing Studio Act, Texas Health and Safety Code, Chapter 146.

(2) Antiseptic--An agent that kills disease-causing microorganisms on human skin or mucosa.

(3) Artist--A person who performs tattooing, permanent cosmetics, and or certain body piercing, and who is responsible for complying with the provisions of these sections.

(4) Aseptic technique--A hygienic practice which prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

(5) Authorized agent--An employee of the department designated by the commissioner to enforce the Act.

(6) Body piercer--A person who performs body piercing and who is responsible for adherence to the provisions of these sections; hereafter referred to as artist.

(7) Body piercing--The creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

(8) Body piercing studio--A permanent, nondwelling building or portion of a building, designated by a license holder and located in accordance with applicable local zoning codes where body piercing is performed, completely separated from living quarters; hereafter referred to as studio.

(9) Client--A person requesting the application of a tattoo or certain body piercing.

(10) Commissioner--Commissioner of Health or his successor.

(11) Contaminated waste--Any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps and pathological and microbiological wastes containing blood and other potentially infectious material, as defined in 29 Code of Federal Regulations, Part 1910.1030, known as "Occupational Exposure to Bloodborne Pathogens". Copies of this provision are indexed and filed at the department, located at 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

(12) Cosmetic--An article or substance intended to be rubbed, poured, sprinkled, or sprayed on or introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering appearances; or an article or substance for use as a component of such an article, except that the term does not include soap.

(13) Department--The Department of State Health Services.

(14) Disinfectant--An agent that kills disease-causing microorganisms on inanimate objects or surfaces.

(15) Ear piercing--The creation of an opening in an individual's ear lobe with an ear piercing gun to insert jewelry or other decoration.

(16) Ear piercing gun--A device that pierces an individual's ear using a single-use stud and clasp ear piercing system. An ear piercing gun shall not be used to pierce any other part of the body besides the ear.

(17) Germicidal Solution--An agent that kills disease-causing microorganisms on hard surfaces; a disinfectant or sanitizer registered with the Environmental Protection Agency and/or a 1:100 dilution of 5.25% sodium hypochlorite (household chlorine bleach) and water, made fresh daily, dispensed from a spray bottle, and used to decontaminate inanimate objects and surfaces.

(18) Germicidal soap--An agent designed for use on the skin that kills disease-causing microorganisms, including but not limited to, products containing povidone-iodine, chloroxylenol, triclosan, and chlorhexidine gluconate.

(19) Gloves--Disposable, single use gloves labeled for surgical or examination purposes.

(20) Hand washing facility--Sink equipped with hot and cold or tempered running water under pressure, used for washing hands, arms, or other portions of the body.

(21) Health care practitioner--A person licensed by the state to practice medicine.

(22) Instruments--Hand pieces, needles, needle bars, hemostats, forceps, pliers, and other items that may come in contact with a client's body or possible exposure to bodily fluids during the tattoo and body piercing procedures.

(23) Jewelry--Any personal ornament inserted into a pierced area, which must be made of surgical implant grade stainless steel (minimum of 316L or 316LVM), solid 14k or 18k gold, niobium, titanium (minimum of 6A14V), platinum, or a dense, low porosity plastic approved by the manufacturer for use in new piercings, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

(24) License holder--A person 18 years or older who owns, operates, or maintains a tattoo studio, tattoo and body piercing studio or temporary location in compliance with these sections.

(25) Managing conservator--A person, licensed child-placing agency, or authorized agency designated by a court as having the right to possession of the child, and the right to consent to medical, surgical, dental, and psychological treatment of the child.

(26) Sanitize--To treat a clean surface and kill pathogenic microorganisms.

(27) Sharps--Any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, needles, scalpel blades, and razor blades.

(28) Sharps container--A puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the International Biohazard Symbol.

(29) Single-use--Articles intended for one-time, one-person use and which are to be discarded after such use.

(30) Sterilization area--A separate room or area separate from workstations with restricted client access in which tattoo and body piercing instruments and jewelry are cleaned, disinfected, and sterilized.

(31) Tattoo/tattooing--The practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related devices including permanent cosmetics. The term includes the application of permanent cosmetics.

(32) Tattoo and body piercing area--The portion of the tattoo or body piercing studio used for applying tattoos or performing body piercing, including surrounding areas which are likely to come into contact with contaminated waste.

(33) Tattooist--A person who performs tattooing or applies permanent cosmetics and who is responsible for adherence to the provisions of these sections; hereafter referred to as artist.

(34) Tattoo Studio--A permanent, nondwelling building or portion of a building, designated by a license holder and located in accordance with applicable zoning codes where tattooing or permanent cosmetic application is performed, completely separated from living quarters; hereafter referred to as studio.

(35) Temporary location--A location at which tattooing or body piercing is performed for a specified length of time of not more than seven days in conjunction with a single event.

(36) Tongue splitting--Cutting of a human tongue into two or more parts.

(37) Universal precautions--A method of infection control in which employees treat all blood and body fluids as to contain all bloodborne pathogens and taking proper precautions to prevent the spread of any bloodborne pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

(38) Waterless hand sanitizers--Sanitizers, approved by the United States Food and Drug Administration, approved for use on the hands to kill microorganisms that do not require the addition of water to be effective.

§229.403. Licensing Fees, Procedures, and Exemptions

(a) License fees. All applicants for a tattoo and body piercing studio license or a renewal license shall pay a nonrefundable license fee for each place of business operated. The license fees are as follows:

(1) \$450 per tattoo only studio or temporary location license for a specified length of time not to exceed seven days;

(2) \$600 for a tattoo and body piercing studio or temporary location license for a specified length of time not to exceed seven days, (allocated \$450 for the tattoo portion; and \$150 for the body piercing portion);

(3) \$200 per body piercing only studio or temporary license for a specified length of time not to exceed seven days;

(4) \$900 for a tattoo only studio for a two-year license;

(5) \$1,200 for a tattoo and body piercing studio, (allocated \$900 for the tattoo portion; and \$300 for the body piercing portion) for a two-year license; and

(6) \$400 per body piercing only studio for a two-year license.

(b) License forms. License and renewal license forms may be obtained from the department, located at 1100 West 49th Street, Austin, Texas 78756-3182 or via the Internet at <http://www.dshs.state.tx.us/license.shtm>.

(c) License application. An application shall be submitted for each tattoo studio and a separate application shall be submitted for each body piercing studio. The initial license application for each studio or temporary location shall be signed and verified, shall be made on the license application furnished by the department, and shall contain the following information:

(1) the full or legal name under which the studio or temporary location is conducted;

(2) the address of the studio or temporary location that is to be licensed. Sufficient descriptive information must be included if the studio or temporary location is located in a portion of the building with other license holders;

(3) if a proprietorship, the name and residence address of the proprietor; if a partnership, the names and residence addresses of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, then the names of the principals of such association;

(4) for each studio or temporary location, the name(s) and residence address(es) of the responsible individual(s) thereof;

(5) the name(s) of the studio's or temporary location's artist(s);

(6) the usual days and hours of operation of each studio or temporary location; and

(7) a description of all services to be provided at the studio or temporary location.

(d) Issuance and term of license.

(1) The department may issue a license to the owner of a studio or temporary location who meets all the requirements of these sections, is in compliance with other applicable statutes, rules, and zoning codes, and pays all fees in compliance with this section.

(2) Unless the license is amended under this section or revoked or suspended under §229.412 of this title, a license or renewal license may be issued for one or two years, as determined by the department. A license for a temporary location will be valid for the specified period of time, not to exceed seven days.

(3) The license shall be displayed at all times in a prominent place in the studio or temporary location.

(e) Renewal of studio licenses.

(1) The license holder shall renew a license in accordance with the requirements of this section.

(2) The license holder shall renew the license by filing an application for renewal on the form prescribed by the department accompanied by the required licensure fee. A licensee must file for renewal before the expiration date of the current license. A person who files a renewal application after the expiration date must pay an additional \$100 as a delinquency fee.

(3) A license holder that fails to submit the renewal application as prescribed in this section and continues to operate the studio is subject to the enforcement provisions of the Tattoo and Certain Body Piercing Studio Act and §229.413 of this title (relating to Refusal, Revocation, or Suspension of License, Emergency Orders, and Enforcement).

(A) Amendment of license. A license must be amended when the name, ownership, or location of the licensed studio is changed. Such changes require submission of the fees as outlined in subsection (a) of this section.

(B) Notification of change of location of studio.

(i) Not fewer than 30 days in advance of the change, the licensee shall notify the commissioner or the commissioner's designee in writing of the licensee's intent to change the location of a licensed studio. The notice shall include the address of the new location, and the name and residence address of the individual in charge of the studio at the new location.

(ii) Notice will be deemed adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee within the established time frames of clause (i) of this subparagraph by certified mail, return receipt requested, mailed to the department, 1100 West 49th Street, Austin, Texas 78756.

(iii) Not later than the tenth day after the change of location is complete, the license holder shall notify the department in writing and shall verify the information submitted under clause (i) of this subparagraph.

(f) Exemption from licensure. Persons who engage only in the following are exempt from the licensing requirements of this section:

(1) a studio or temporary location located within a medical facility which is licensed under other law, or an office or clinic of a person licensed by the Texas State Board of Medical Examiners;

(2) a person who performs only ear piercing; or

(3) a facility in which only ear piercing is performed.

(g) Texas Online. Applicants may submit applications and renewal applications for a license under these sections electronically by the Internet through Texas Online at www.texasonline.state.tx.us. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) A current license shall only be issued when all past due fees and late fees are paid.

§229.404. Physical Facilities

(a) A studio must be in a permanent, nondwelling building or portion of a building which must be in a location which is permissible under local zoning codes, if any. The studio shall be separated from living quarters by complete floor to ceiling partitioning and shall contain no access to living quarters.

(b) The studio or temporary location shall be maintained in a sanitary condition.

(1) Work surfaces shall be cleaned and sanitized with a germicide solution.

(2) Other environmental surfaces shall be cleaned with an all-purpose detergent disinfectant.

(c) The walls, ceilings, and floors shall be kept in good repair. The tattoo and body piercing area shall be constructed of smooth, hard, surfaces that are non-porous, free of open holes or cracks, and easily cleaned.

(d) Studios or temporary locations shall have adequate lighting of at least 50 foot candles of illumination in the tattooing, body piercing, and sterilization area.

(e) Adequate mechanical ventilation shall be provided in the studio.

(f) Each studio or temporary location shall be equipped with hand-washing facilities for its personnel with unobstructed access to the tattoo and body piercing area such that artists can return to the area without having to touch anything with their hands. Hand-washing facilities shall be equipped with hot and cold or tempered running water under pressure; liquid germicidal soap; single-use towels or other approved hand-drying devices; and a covered refuse container. Such facilities shall be kept clean and in good repair.

(g) Animals are not permitted in the studios or temporary locations, except for guide or service animals accompanying persons with disabilities, or non-mammalian animals in enclosed glass containers such as fish aquariums, which shall be outside the tattooing, body piercing, and sterilization area.

(h) Use of tobacco products shall be prohibited in the tattoo, body piercing, and sterilization area. Consumption of alcoholic beverages shall be prohibited in the studio or temporary location.

(i) The studio or temporary location shall be kept free of rodents and vermin and protected from infestation by insects.

(j) If tattooing or body piercing is performed where other non-tattooing or non-body piercing services are provided, it shall be provided in an area that is physically separate, and with protection from other activities to avoid the transfer of disease-causing microorganisms or other irritant particles into to the artist's workstation or sterilization area.

§229.405. Personnel Responsibilities

(a) All artists while tattooing or body piercing shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty.

(b) All artists shall wash their hands thoroughly using hot or tempered water with a liquid germicidal soap before and after tattooing or body piercing and as often as necessary to remove contaminants.

(c) All artists shall wear single-use gloves while assembling tattooing and body piercing instruments and while tattooing and body piercing.

(d) When a session is interrupted or immediately after gloves are torn or perforated:

(1) gloves shall be removed and discarded; and

(2) hands shall be washed and a fresh pair of gloves used.

(e) Artists shall use universal precautions while tattooing or body piercing. An artist diagnosed with a communicable disease shall provide to the department a written statement from a health care practitioner that the artist's condition no longer poses a threat to public health.

(f) The area of the client's skin to be tattooed shall be cleaned with an approved germicidal soap according to label directions.

(g) The external skin of the client to be pierced shall be cleaned with an approved germicidal soap according to label directions. In the case of oral piercings, the operator shall provide the individual with antiseptic mouthwash in a single-use cup and shall ensure that the individual utilizes the mouthwash provided. In the case of a lip, labret, or cheek piercing, procedures described in this paragraph for both skin and oral piercings shall be followed.

(h) If shaving is required, razors shall be single-use. The razor or razor's head must be placed in a biohazard container after use.

(i) Each artist performing any tattoo or body piercing procedure in the studio or temporary location, shall have the education, training and experience, or any combination thereof, to practice aseptic technique and prevent the transmission of bloodborne pathogens. All procedures shall be performed using aseptic technique.

§229.406 Client Qualifications, Disclosure, and Records

(a) Except as permitted in subsections (d) and (e) of this section, a client must be a minimum of 18 years of age and shall present at the time of tattooing or body piercing a valid, government issued, positive identification card including, but not limited to, a driver's license, passport, or military identification. The identification must contain a photograph of the individual and a printed date of birth.

(b) The artist shall verify and document in the permanent client record the client's age, date of birth, and the type of identification provided.

(c) An artist may not tattoo a person younger than 18 years of age except as permitted in subsection (d) of this section.

(d) With the consent of a minor's parent or guardian, who determines it to be in the best interest of the minor child to cover an existing tattoo, a person under the age of 18 may be tattooed under the following conditions:

(1) The existing tattoo must contain:

(A) obscene or offensive language or symbols;

(B) gang-related names, symbols, or markings;

(C) drug-related names, symbols, or pictures; or

(D) some other type of words, symbols or markings that the parent, guardian, or a court considers would be in the best interest of the minor to cover.

(2) The consent required by subsection (d) can be satisfied by the minor's parent or guardian:

(A) being physically present at the time the tattooing is being performed;

(B) executing an affidavit stating that the person is the parent or guardian of the individual on whom the tattooing is being performed;

(C) presenting evidence of the minor's identity to the artist;

(D) presenting evidence of the status as parent or guardian of the individual who will receive the tattoo to the artist;

(E) supplying the studio with a written detailed description or photograph of the tattoo to be covered to be kept with the studio's permanent records; and

(F) the full name, address, and telephone number of the parent or guardian.

(e) An artist may not perform body piercing on a person younger than 18 years of age without the consent of a parent or guardian of the individual. The consent can be satisfied by:

(1) completion of client and parental approval records that include the following information: a written and notarized consent by the individual's parent, managing conservator, or guardian which shall contain:

(A) the full name, address, and telephone number of the client;

(B) the full name, address, and telephone number of the parent, managing conservator, or guardian;

(C) the location on the body that may be pierced; and

(D) the signatures of the minor and parent, managing conservator, or guardian;
and

(2) the individual's parent, managing conservator, or guardian being physically present at the time the body piercing is being performed; and

(A) executing an affidavit stating that the person is the parent, managing conservator, or guardian of the individual on whom the body piercing is being performed;

(B) presenting evidence of the minor's identity to the artist; and;

(C) presenting evidence of the status as parent, managing conservator, or guardian of the individual who will receive the body piercing to the artist.

(f) No person may be tattooed or body pierced who appears to be under the influence of alcohol or drugs.

(g) Tattooing and body piercing shall not be performed on any skin surface which manifests any evidence of unhealthy conditions such as rashes, boils, infections, or abrasions.

(h) Before receiving a tattoo, each client (and if applicable, the parent, managing conservator, or guardian) shall be informed verbally and in writing about the possible risk and dangers associated with the application of each tattoo. These shall include, but are not limited to, at least the following: the possibility of discomfort or pain; the permanence of the markings; the risk of infection; and the possibility of allergic reaction to the pigments or other materials used.

(i) Before receiving a body piercing, each client (and if applicable, the parent, managing conservator, or guardian) shall be informed verbally and in writing about the possible risks and dangers associated with receiving a body piercing. These shall include, but are not limited to, at least the following: the possibility of discomfort or pain; the possibility of scarring; the possibility of bleeding; the possibility of swelling; the risk of infection; the possibility of nerve damage; and the increased risk for adolescents during certain stages of development.

(j) The studio or temporary location shall maintain proper records of each client. The information shall be permanently recorded and made available for examination by the authorized agent. Records shall be maintained at the studio for at least two years following the date of the last entry. The temporary location client records shall be maintained by the license holder. These permanent records shall include the following:

(1) the name, address, and telephone number of the client;

(2) the date tattooing or body piercing was performed;

(3) the client's age, date of birth, and type of positive identification provided to the artist (this information is to be recorded by the artist as described in subsection (b) of this section);

(4) the specific color or colors of the tattoo or type of jewelry used for the piercing and, when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;

(5) the location on the body where the tattoo or body piercing was performed;

(6) the name of the artist;

(7) a statement that the client has received a copy of applicable written care instructions, and that the client has read and understands the instructions; and

(8) the signature of the client.

(k) A person who is required to maintain records under this section or a person who is in charge or custody of those records shall, at the request of an authorized agent or health care authority, permit the authorized agent or the health authority at all reasonable times access to and copying of the records for verification.

(l) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a tattoo or body piercing studio. An offense under this subsection is a Class B misdemeanor.

§229.407. Sterilization

(a) A studio or temporary location is required to utilize instruments that have been prepared as described in §229.409(a)-(e) of this title (relating to Tattooing and Body Piercing Instruments and Jewelry). The studio or temporary location shall use sterilization equipment that is approved by the United States Food and Drug Administration for the purpose of sterilization, and adequate in size to accommodate necessary utensils and instruments. A copy of the manufacturer's recommended procedures for operation of the sterilization unit(s) must be available for inspection by an authorized agent at the time of inspection.

(b) Each person responsible for the sterilization of instruments and jewelry shall be able to demonstrate to the department's authorized agent the correct sterilization procedures and the proper operation of autoclave and/or dry heat sterilization equipment.

(c) After each use, the reusable instruments and jewelry shall be cleansed to remove blood and tissue residue before sterilization as described in §229.409(n) of this title.

(d) Instruments and jewelry requiring sterilization shall be packed in packages approved for the sterilization unit. Instruments and jewelry shall be packed individually, or as a set provided such set is intended to be used for a single procedure. Each package shall be labeled with the date of sterilization and the initials of the person sterilizing the instruments. Packaged sterilized instruments shall be kept in a sterile condition and stored in a clean dust-tight container when not in use. Instruments and jewelry may be sterilized immediately before tattooing or body piercing without the use of sterilization packages as provided by the sterilization unit's manual. The studio must keep records in accordance with subsection (g) of this section.

(e) Each package of instruments and jewelry sterilized shall be monitored for sterilization by the use of chemical/heat sensitive indicators.

(f) Each sterilization unit used by the studio to sterilize instruments and jewelry must have a spore test performed each calendar month by an approved laboratory, and the test results be made available for inspection.

(g) Each studio or temporary location shall maintain sterilization records. The information shall be permanently recorded and made available for examination by an authorized agent in the studio for at least two years from the date of the last entry. These permanent records shall be maintained at the studio and shall include the following:

- (1) date of sterilization;
- (2) quantity and type of instruments to be sterilized; and
- (3) name or initials of the individual sterilizing the instruments.

(h) Sterilized instruments and jewelry stored in accordance with the sterilization unit owner's manual and stored in accordance with the sterilization packet manufacturer's labeling or letter provided by the manufacturer of the sterilization packets will be considered sterile for the length of time set out in the sterilization unit owner's manual or packet labeling or supporting documentation. If the studio personnel cannot provide a manual for the sterilization equipment at the time of inspection or if no length of time is set out by the sterilization unit's manual, the equipment must be stored in an approved manner and the instruments and jewelry not used within 60 days after sterilization shall no longer be considered sterile. If presterilized instruments are used, the artist shall obtain documentation from the manufacturer that describes the method of sterilization utilized by the manufacturer and the manufacturer's recommendations for storage and maintenance of sterility. This documentation shall be available for inspection by an authorized agent. The artist shall follow the manufacturer's instructions for storage and maintenance of sterility.

(i) One of the following methods of sterilization shall be used.

(1) Autoclave--steam under pressure:

(A) 121 degrees Celsius (250 degrees Fahrenheit) and a pressure of at least 15 pounds per square inch for not less than 30 minutes after the chamber of the autoclave has reached the required temperature and pressure; or

(B) as specified in the manufacturer's operator's manual.

(2) Dry heat sterilization:

(A) 160 degrees Celsius (320 degrees Fahrenheit) for not less than one hour under atmospheric pressure after the sterilizer has reached the required temperature; or

(B) as specified in the manufacturer's operator's manual.

§229.408. Care of the New Tattoo and/or Body Piercing

(a) Each time tattooing or body piercing is performed the client (and if applicable, the parent, managing conservator, or guardian) shall receive oral and written instructions on the care of the area tattooed or pierced. The client shall sign a written statement in the permanent client record acknowledging that the client has received a copy of the written care instructions, and that the client has read and understands the instructions.

(b) The written care instructions for tattooing shall contain at least the following items:

(1) for at least two weeks, the need to minimize exposure to the sun, and to discourage swimming;

(2) the need to properly cleanse the tattooed area;

(3) the need to apply antibiotic ointment or cream;

(4) the need to use sterile bandage(s) or other sterile dressing(s) when necessary;

(5) the name of the artist, and the name, address, and telephone number of the studio or temporary location; and

(6) the instructions for the client to consult a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the application of the tattoo to the artist and to the department at 1-888-839-6676.

(c) The written care instructions for body piercing shall contain at least the following items:

(1) the need to properly cleanse the pierced area by using antibacterial or antimicrobial soap for the external skin or an antiseptic or salt water mouthwash for the oral cavity;

(2) for at least the first six weeks, minimize exposure to filth;

(3) the need to use sterile bandage(s) or other sterile dressing(s) when necessary;

(4) the name of the artist, and the name, address, and telephone number of the studio or temporary location; and

(5) the instructions for the client to consult a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the body piercing to the artist and to the department, at 1-888-839-6676.

§229.409. Tattooing and Body Piercing Instruments and Jewelry

(a) Instruments and jewelry used during tattooing and piercing procedures which may contact blood or other bodily fluids, or which come in direct contact with skin which is not intact shall be sterilized after each use or disposed of. These devices include, but are not limited to, bars, tubes, forceps, receiving tubes, and tapers. This does not include ear piercing guns or tattoo machines/devices.

(b) Instruments and jewelry used during tattooing and body piercing which do not come in contact with broken skin but may come in contact with mucous membranes and oral tissue should be sterilized after each use. If, however, sterilization is not feasible because the instrument or jewelry will be damaged, the instrument or jewelry shall be treated with a germicidal solution prior to use. These devices include, but are not limited to, calipers and gauge wheels.

(c) Instruments that come into contact only with intact skin shall be treated with a germicidal solution prior to use. These devices include, but are not limited to, hand mirrors.

(d) Reusable instruments shall be constructed in a manner that permits easy cleaning and sterilization.

(e) Needles and razors or razors' heads used to perform body piercing and tattooing shall be single-use and disposed of in a sharps container.

(f) Single-use disposable instruments shall be maintained in clean condition and dispensed in a manner to prevent contamination to the unused instruments. These devices include, but are not limited to, cups, cotton swabs, corks, rubber bands, and toothpicks.

(g) Use of styptic pens or alum solids to control blood flow is prohibited.

(h) All dyes or pigments used in tattooing and piercing shall be non-toxic, free from adulteration, and made from materials generally regarded as safe. Marking instruments shall be single-use or sanitized by design, such as alcohol based ink pens, and shall be used only on intact skin that has been treated with a germicidal soap. Any marking instrument that comes in contact with mucous membranes or broken skin shall be single-use.

(i) Only single-use pigment or dye containers shall be used for each client. Pigments and dyes shall be dispensed from containers in a manner to prevent contamination to the unused portion. Individual containers of dye or pigment shall be discarded after use.

(j) In order to minimize transmission of body fluids and disease, single-use plastic covers shall be used to cover spray bottles or other reusable accessories for multiple client use that are handled by the artist during tattooing and body piercing.

(k) All stencils shall be single-use. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied using aseptic technique and in a manner to prevent contamination of the original container and its contents. The applicator shall be single-use.

(l) Contaminated reusable instruments shall be placed in a labeled covered container which may contain a disinfectant solution such as 2.0% alkaline glutaraldehyde (not to be construed as all inclusive) until it can be cleaned and sterilized.

(m) All containers holding contaminated instruments and container lids shall be emptied of contaminated solution and cleaned and sanitized daily or more often if needed.

(n) Reusable instruments shall be cleaned by gloved personnel prior to sterilization by one of the following methods:

(1) mechanically pre-clean the items by using a clean cotton ball or swab moistened with a solution of low-residue detergent and cool water, with care taken to ensure the removal of any pigment or body substances not visible to the eye, thoroughly rinse with warm water and then drain, and clean by soaking in a protein dissolving detergent-enzyme cleaner used according to manufacturer's instructions; or

(2) clean the items in an ultrasonic cleaning unit used according to manufacturer's instruction. A copy of the manufacturers recommended procedures for operation of the ultrasonic cleaning unit must be available for inspection by an authorized agent; and

(3) rinse and dry the items prior to packaging for sterilization.

§229.410. Report of Infection or Allergic Reactions

(a) The studio shall provide a written report of any infection or allergic reaction resulting from a body piercing or the application of a tattoo to the department within five working days of its occurrence or knowledge thereof. The report shall include:

(1) the name of the affected client;

(2) the name and address of the studio or temporary location where the tattoo or body piercing was performed;

(3) the complete legal name of the artist;

(4) the date the tattoo or piercing was performed;

(5) the specific color or colors of the tattoo or type of jewelry used for the piercing and, when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;

(6) the location of the infection and the location on the body where the tattoo or piercing was applied;

(7) the name and address of the health care practitioner, if any; and

(8) any other information considered relevant to the situation.

(b) The department shall use these reports in their efforts to identify the source of the adverse reaction(s) and to take action to prevent its recurrence.

§229.411. Disposal of Infectious Waste

(a) Sharps shall be subjected to the methods of treatment and disposal as described in Chapter 1, Subchapter K, §1.136 of this title (relating to Approved Methods of Treatment and Disposition) and Title 30, Texas Administrative Code, Chapter 330, Subchapter Y.

(b) Other studio waste generated during the tattooing and body piercing process, i.e., cotton balls, cotton tip applicators, corks, toothpicks, tissues, paper towels, gloves, single use plastic covering, and pigment containers (not to be construed as all-inclusive) shall be disposed of in accordance with Chapter 1, Subchapter K, §1.136(a)(2) of this title or Title 30, Texas Administrative Code, Chapter 330. Copies of these provisions are indexed and filed in the office of the department, located at 1100 West 49th Street, Austin, Texas 78756, 1-888-839-6676, and are available weekdays for inspection between the hours of 8:00 a.m. and 5:00 p.m.

§229.412. Enforcement, Administrative Penalties, Refusal, Revocation, or Suspension of License, and Emergency Orders

(a) Basis. The department may, after providing notice and opportunity for hearing, refuse to license a studio or temporary location, or may revoke or suspend the license for violations of the requirements in these sections or for any reasons described in the Tattoo and Certain Body Piercing Studio Act, or in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(b) Hearing. All hearings for the refusal, revocation or suspension of a license are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(c) Enforcement and penalties.

(1) Administrative penalty. The department may, after providing notice and opportunity for hearing, assess an administrative penalty as provided in §146.019 of the Tattoo and Certain Body Piercing Studio Act, the Health and Safety Code, Chapter 431, and §229.261 of this title (relating to Assessment of Administrative), for violations of these sections. All hearings for the assessment of an administrative penalty are governed by the State Office of Administrative Hearings.

(2) Civil penalty; Injunction. If it appears that a person has violated or is violating Health and Safety Code, Chapter 146, or an order issued or a rule adopted under Health and Safety Code, Chapter 146, the commissioner may request the attorney general or the district attorney, county attorney, or municipal attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(A) an order enjoining the violation;

(B) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation;

(C) the assessment and recovery of a civil penalty; or

(D) both injunctive relief and a civil penalty.

(3) Criminal penalty. A person commits an offense if the person violates the Act or rules adopted under the Act. An offense under the Act or rules is a Class A misdemeanor except as indicated in §229.406(1) of this title (relating to Client Qualifications, Disclosure, and Records).

(4) Re-issuance of a license. If a license issued under these sections has been revoked or denied for violation of these rules, the license holder named in the revocation or denial is not eligible for licensing under these sections for a period of two years.

(5) Revocation or Suspension of License.

(A) License holder includes sole proprietors, each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

(B) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(i) the license holder has been convicted of violating this chapter or a rule adopted under this chapter;

(ii) the license holder violated a provision of this chapter or a rule adopted or order issued under this chapter;

(iii) the license holder made a false or misleading statement in connection with the original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the department;

(iv) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule of the department adopted under this chapter;

(v) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(vi) the license holder was intoxicated on the licensed premises.

(C) The department may refuse to renew or, after notice and hearing, suspend for not more than 60 days or revoke a tattoo studio or body piercing studio license if the department finds that the license holder is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 151, Tax Code, or is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

(D) If a license holder cannot be located for any notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the licensed premises.

(6) Refusal of License. The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(A) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(B) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(C) the applicant violated or caused to be violated a provision of this chapter or a rule of the department adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(D) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(E) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule of the department adopted under this chapter;

(F) the applicant is a minor; or

(G) the applicant does not provide an adequate building available at the address for which the license is sought before conducting any activity authorized by the license.

(7) The department may refuse to issue or renew, for a period of one year from the date of application for the initial or renewal license, a tattoo studio or body piercing studio license for a premises where a shooting, stabbing, or other violent act or an offense involving drugs occurred that involved a license applicant, license holder, or registrant under this chapter or a patron or employee of the studio.

(d) Emergency Orders. The commissioner may, with or without notice or hearing, issue an emergency order relating to regulation under this chapter of a tattooist or body piercer, or to the operation of a tattoo studio or body piercing studio, if the commissioner finds that:

(1) the operation of the tattoo studio or body piercing studio or the performance of tattooing or body piercing by the tattooist or body piercer presents an immediate and serious threat to human health; or

(2) a shooting, stabbing, or other violent act or an offense involving drugs:

(A) occurred at the tattoo studio or body piercing studio; or

(B) involved the tattooist or body piercer; or

(3) other procedures available to the department to remedy or prevent the threat will result in an unreasonable delay.

(e) If the commissioner issues an emergency order under this section without a hearing, the department shall set a hearing under Chapter 2001, Government Code, to affirm, modify, or set aside the emergency order.

(f) If the license or registration holder cannot be located for a notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the premises of the license holder or the premises where the registration holder is employed.

§229.413. Tongue Splitting

A person may not perform tongue splitting in a tattoo or body piercing studio, or at a temporary location.